



August 14, 2014

The Honorable John D. Love
Eastern District of Texas
211 West Ferguson, 3rd Floor
Tyler, Texas 75702

**Re: *Core Wireless Licensing S.a.r.l. v. Apple, Inc.*,
Civil Case No. 6:12-cv-0100 (E.D. Texas, 2012)**

Dear Honorable Judge Love:

Core Wireless respectfully requests leave to file a *Daubert* motion to preclude opinions of Apple's damages expert relying on the use of a baseband chip as the "smallest saleable unit." Core Wireless raises this issue now in light of Judge Davis's recent opinion in *Commonwealth Scientific and Industrial Research Organization ("CSIRO") v. Cisco Systems* expressly criticizing that approach and rejecting its use. Ex. 1 (Case No. 6:11-cv-00343-LED, D.I. 324 (July 23, 2014)).

In his damages report, Dr. Lynde relies on the cost of Apple's baseband chips as the smallest saleable unit (Lynde Rpt., ¶¶ 77-82) and the profitability of the Qualcomm division responsible for making those baseband chips. Lynde Rpt., ¶¶ 83-84. In *CSIRO*, Judge Davis found the smallest saleable unit methodology to be unreliable for a wireless communications patent because, "The benefit of the patent lies in the idea, not in the small amount of silicon that happens to be where that idea is physically implemented." Ex. 1 at 22. Judge Davis further explained:

Basing a royalty solely on chip price is like valuing a copyrighted book based only on the costs of the binding, paper, and ink needed to actually produce the physical product. While such a calculation captures the cost of the physical product, it provides no indication of its actual value.

Id. Ultimately, Judge Davis discredited Cisco's damages analysis which relied on the smallest saleable unit methodology. Striking Dr. Lynde's opinion on smallest saleable unit is appropriate for the same reasons, and additionally because he provides no evidence that any party at the hypothetical negotiation would have proposed the smallest saleable unit or Qualcomm's profitability of baseband chips as an indicia of a reasonable royalty.

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Allowing Core Wireless to file this motion now is appropriate in light of the new case law discrediting Dr. Lynde's methodology. *See, e.g., In re Benjamin Moore & Co.*, 318 F.3d 626, 629 (5th Cir. 2009). Accordingly, Core Wireless respectfully requests leave to file a *Daubert* motion seeking to preclude Dr. Lynde's testimony on the smallest saleable unit and the profitability of baseband chips.

Very truly yours,



Henry C. Bunsow

cc: All Counsel of Record (by ECF)